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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,273	09/18/2000	Jean-Claude Constantin	32978	4537
116	7590	12/09/2005	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			LAO, LUN S	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/664,273	<b>Applicant(s)</b> CONSTANTIN, JEAN-CLAUDE	
	<b>Examiner</b> Lun-See Lao	<b>Art Unit</b> 2644	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): claims 1, 11, and 14 under 112 first paragraph.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-20.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.


#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

  
 HUYEN LE  
 PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument are not persuasive. Regarding applicant's argued that Anderson does not teach the signal being transmitted from one of the at least one transmitters to the receiver and means for generating and transmitting configuration parameters...the configuration parameters being transmitted independent of the signal" (see the remark page 6 second paragraph). The examiner disagrees that. Anderson teaches that a wireless transmission system comprising (see fig.2). a receiver comprising an antenna (see fig.g, 900)., at least one transmitter (900)., a signal which is modulated in at least one of amplitude, frequency and phase (see col. 12 line 47-col. 13 line 22), the signal being transmitted from one of the at least one transmitters to the receiver, means (see fig.g) for generating and transmitting configuration (by dsp control the switches) parameters (916,924, 928) for enabling demodulation of the signal, and the configuration parameters being transmitted independent of the signal (by push the keyboard and see col. 20 line 48-col. 21 line 31). and means (see fig.g, 916, 924,928) for receiving and processing the configuration parameters, said means (see fig.g, 916, 924,928) being provided in the receiver (see col. 13 line 3-col. 15 line 11). It meets the limitation of claim 11 recited. Applicant further argued that these limitations require two independent channels: one for transmitting the signal and one for transmitting the configuration parameters independent of the signal (see the remark page 6 second paragraph). The examiner responds that these limitation require two independent channels is not claimed, and thus moot.

Applicant further argued that neither Anderson nor Topholm nor any combination thereof teaches or suggests transmitting configuration parameters through a control channel independent of the signal transmitted through the information channel" (see the remark page 6, fourth paragraph). The examiner responds that. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Because, Anderson (783) and Topholm (819) both teach hearing aid with a control device, therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Tephholm into Anderson to provide a hearing system running faster by two separated channel, such as a communication channel and a control channel. The combination meets the limitation as the claims recited.



HUYEN LE  
PRIMARY EXAMINER